

### Subpart A—Scope of Part; Definitions

#### § 30.100 How do I use this part?

(a) The following table is a guide to the relevant contents of this part by subject matter.

For provisions relating to . . .	consult . . .
(1) All proceedings in part 30 .....	§§ 30.100 through 30.102.
(2) Claims against probate estate .....	§§ 30.140 through 30.148.
(3) Commencement of probate .....	§§ 30.110 through 30.115.
(4) Consolidation of interests .....	§§ 30.150 through 30.153.
(5) Formal probate proceedings before an administrative law judge or Indian probate judge.	§§ 30.210 through 30.246.
(6) Probate of estates of Indians who die possessed of trust or restricted property.	All sections except §§ 30.260 through 30.274.
(7) Purchases at probate .....	§§ 30.160 through 30.175.
(8) Renunciation of interests .....	§§ 30.180 through 30.188.
(9) Summary probate proceedings before an attorney decision maker.	§§ 30.200 through 30.207.
(10) Tribal purchase of certain property interests of decedents under special laws applicable to particular Tribes.	§§ 30.260 through 30.274.

(b) Except as limited by the provisions of this part, the regulations in part 4, subparts A and B of this subtitle apply to these proceedings.

(c) The following provisions do not apply to Alaska property interests:

- (1) § 30.151;
- (2) §§ 30.160 through 30.175;
- (3) § 30.182 through 30.185, except for § 30.184(c);
- (4) § 30.213; and
- (5) § 30.214(f) and (g).

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7506, Feb. 10, 2011]

#### § 30.101 What definitions do I need to know?

*Act* means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108-374, as codified at 25 U.S.C. 2201 *et seq.*

*Administrative law judge (ALJ)* means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

*Affidavit* means a written declaration of facts by a person that is signed by that person, swearing or affirming

under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

*Agency* means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

*Attorney decision maker (ADM)* means an attorney with OHA who conducts a summary proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

*BIA* means the Bureau of Indian Affairs within the Department.

*BLM* means the Bureau of Land Management within the Department.

*Board* means the Interior Board of Indian Appeals within OHA.

*Chief ALJ* means the Chief Administrative Law Judge, Probate Hearings Division, OHA.

*Child* means a natural or adopted child.

*Codicil* means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

*Consolidation agreement* means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

*Covered permanent improvement* means a permanent improvement (including an interest in such an improvement) that is:

(1) Owned by the decedent at the time of death; and

(2) Attached to a parcel of trust or restricted land that is also, in whole or in part, owned by the decedent at the time of death.

*Creditor* means any individual or entity that has a claim for payment from a decedent's estate.

*Day* means a calendar day.

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*Decedent* means a person who is deceased.

*Decision or order* (or *decision and order*) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an ADM in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

*De novo review* means a process in which an administrative law judge or Indian probate judge, without regard to the decision previously issued in the case, will:

(1) Review all the relevant facts and issues in a probate case;

(2) Reconsider the evidence introduced at a previous hearing;

(3) Conduct a formal hearing as necessary or appropriate; and

(4) Issue a decision.

*Department* means the Department of the Interior.

*Deposition* means a proceeding in which a party takes testimony from a witness during discovery.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Discovery* means a process through which a party to a probate proceeding obtains information from another party. Examples of discovery include interrogatories, depositions, requests for admission, and requests for production of documents.

*Eligible heir* means, for the purposes of the Act, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are:

(1) Indian;

(2) Lineal descendants within two degrees of consanguinity of an Indian; or

(3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting—by descent, renunciation, or consolidation agreement—another trust or restricted interest in such a parcel from the decedent.

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*Estate* means the trust or restricted land and trust personalty owned by the decedent at the time of death.

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

*Heir* means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

*Individual Indian Money (IIM) account* means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

*Indian* means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*Indian probate judge (IPJ)* means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

*Interested party* means:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) Any co-owner exercising a purchase option.

*Interrogatories* means written questions submitted to another party for responses as part of discovery.

*Intestate* means that the decedent died without a valid will as determined in the probate proceeding.

*Judge* means an ALJ or IPJ.

*Lockbox* means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

*LTRO* means the Land Titles and Records Office within BIA.

*Master* means a person who has been specially appointed by a judge to assist with the probate proceedings.

*Minor* means an individual who has not reached the age of majority as defined by the applicable law.

*OHA* means the Office of Hearings and Appeals within the Department.

*OST* means the Office of the Special Trustee for American Indians within the Department.

*Per stirpes* means by right of representation, dividing an estate into equal shares based on the number of decedent's surviving children and predeceased children who left issue who survive the decedent. The share of a predeceased child of the decedent is divided equally among the predeceased child's surviving children.

*Probate* means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

- (1) Determine the heirs;
- (2) Determine the validity of wills and determine devisees;
- (3) Determine whether claims against the estate will be paid from trust personality; and
- (4) Order the transfer of any trust or restricted land or trust personality to the heirs, devisees, or other persons or entities entitled by law to receive them.

*Purchase option at probate* means the process by which eligible purchasers can purchase a decedent's interest during the probate proceeding.

*Restricted property* means real property whose title is held by an Indian but which cannot be alienated or encumbered without the consent of the Secretary. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term "restricted property" as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Summary probate proceeding* means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that did not exceed \$5,000 in value on the date of the death of the decedent.

*Superintendent* means a BIA Superintendent or other BIA official, including a field representative or one holding equivalent authority.

*Testate* means that the decedent executed a valid will as determined in the probate proceeding.

*Testator* means a person who has executed a valid will as determined in the probate proceeding.

*Trust personality* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*Trust property* means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*We or us* means the Secretary or an authorized representative as defined in this section.

*Will* means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

*You or I* means an interested party, as defined herein, with an interest in the decedent's estate unless a specific section states otherwise.

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### § 30.102 What assets will the Secretary probate?

(a) We will probate only the trust or restricted land or trust personality owned by the decedent at the time of death.

(b) We will not probate the following property:

- (1) Real or personal property other than trust or restricted land or trust personality owned by the decedent at the time of death;